

REMARKS

Claims 1-62 are pending in the Application. Claims 21, 22, 30-48, 61 and 62 are withdrawn from consideration by Examiner. Claims 1-6, 9, 20 and 60 have been amended.

Fig. 1 has been modified to overcome the Examiner's objections to the claims. Substitute sheet for Fig. 1 is attached. The Specification has been amended to identify and describe the items added to Fig. 1. Neither amendments to the Specification or to the drawings add new matters because the concept that the LEDs can be embedded in insulating material or heat conductive material was disclosed in the application as originally filed (See lines 8-11, page 6).

I. Claim Election/Restriction

In previous Office Communication, the Examiner identified four different species originally filed in the present application as:

- I. Species #1 characterized by figure 1;
- II. Species #2 characterized by figure 2;
- III. Species #3 characterized by figure 3; and
- IV. Species #4 characterized by figure 4.

Accordingly, Examiner requested that Applicants elect one species. Applicants elected Species #1 with traverse. Applicants believe that the Examiner errs in requiring an election in the above referenced application. The application is directed to a phototherapeutic device depicted in figures 1-4 (fig. 1, 100; fig. 2, 100, 202, 204, 206; fig. 3, 300; fig. 4, 400). Fig. 1 shows a peeled back schematic of the device, which exposes the inner components. Fig. 3 simply shows the device of fig. 1 on a patient's knee. Fig. 2 shows in greater detail the control mechanism, which is depicted in figs. 1, 2 and 3 as item 126 and in fig. 4 as item 422. Fig. 4 shows a large version of the device, wherein a whole person can fit inside the device. The device contains the same components as those shown in figs. 1, 2, and 3: diodes (fig. 1, 116 and 118; fig. 4, 404), a housing (fig. 1, 104, fig. 4, 402) and a controller (figs. 1, 2 and 3, 126; fig. 4, 422). It is

well known that differences in size do not lead to patentably distinct inventions. Therefore, Applicants believe that the embodiment shown in fig. 4 should not be segregated from the embodiments shown in figs. 1-3. Fig. 5 is a schematic of the biofeedback loop of the controller (figs. 1, 2 and 3, 126; fig. 4, 422) and, more specifically, the CPU (fig. 2, 214), which applies to all of the preceding figures.

Applicants contend that all of the figures are interrelated and that electing a single species based on a lone figure would result in an unnecessary limitation of the invention. The figures show only the internal and external elements of the device, depicted in a large and small size, along with the electrical componentry and computer logic loop necessary to allow the invention to function.

Even if only Species #1 is elected, all pending claims 1-62 read on the elected species. For instance, although the CPU (fig. 2, 214) is not illustrated in details in Fig. 1, it is housed in the controller 126 as shown in figs. 1, 2 and 3. Therefore, Applicants respectfully request that all claims 1-62 be considered.

II. Objections to the drawings

Examiner objected to the drawings and request that the curable material in claim 4 (a thermosetting resin in claim 5), the material for altering flexibility in claim 6 (the casting modality in claim 7) be specifically pointed out in the drawings. Claims 4-6 have all been amended to recite a curable material made of a thermosetting resin, and therefore Examiner's objection is overcome. Claim 7 recites a casting modality that conforms to different portion of the body. Casting modality is not a material, rather it is a mode of operation, and as disclosed may vary with different materials used for the enumerated parts. Accordingly, Applicants disagree with Examiner that the casting modality needs to be shown on the drawings and respectfully request that the objection be withdrawn.

III. Claim objections

Claims 1, 4, 5, 9, 20 and 60 have been amended in a clarifying way to overcome Examiner's objections to these claims.

IV. Claim Rejections—35 U.S.C. §102

Claims 1, 2, 6-19, 23-25, 28, 29, 49-57 and 60 stand rejected under 35 U.S.C. 102(e) as being anticipated by Zharov (U.S. 6,443,978 B1). Claims 2, 6-19, 23-25, 28, 29, 49-57 all depend from Claim 1, Claim 60 is an independent claim. Claims 1 and 60 have both been amended to recite a shapable housing comprising a curable material made of a thermosetting resin or an incurable but flexible material that is capable of conforming to the treatment area. Such amendments distinguish Zharov. Zharov teaches the use of plaster casting materials, but does not teach or suggest the use of a curable material made of a thermosetting resin. Neither does Zharov teach or suggest the use of flexible materials such as elastic bandage material, latex, silicone, cloth. Therefore, the present claims as currently amended are distinguishable from Zharov, and Applicants respectfully request that the examiner withdraw the rejections.

Similarly, Examiner's rejections of Claims 1, 4 and 20 as being anticipated by Vreman (U.S. 6,596,016 B1) are overcome by the current amendment. Although Vreman discloses a shapable housing comprising a curable material, the present claims are limited to a shapable housing comprising a curable material made of a thermosetting resin or an incurable but flexible material that is capable of conforming to the treatment area. Therefore, the present Claim 1 and all its dependent claims are distinguishable from Vreman and Applicants respectfully request that the examiner withdraw the rejections.

Examiner also rejected claims 1-3 as being anticipated by Russell (U.S. 6,290,713). Although Russell discloses a shapable housing comprising a flexible material in the form of a metal sheet, Russell does not teach or suggest that the flexible material can be a mesh. Moreover, Claim 1 and its dependant claims as amended recite a curable material made of a thermosetting resin and are distinguishable from Russell, and Applicants respectfully request that the examiner withdraw the rejections.

V. Claim Rejections—35 U.S.C. §103


Claim 26 is rejected as being obvious over Zharov in view of Prescott (U.S. 6,454,791). Claim 27 is rejected as being obvious over Zharov in view of Mendes (U.S.

5,259,380). Claims 58 and 59 are rejected as being obvious over Zharov. Claim 5 is rejected as being obvious over Vreman in view of Zharov.

Claims 5, 26, 27, 58 and 59 all depend from Claim 1. Claim 1 has been amended to narrow its scope to a system containing, among other components, a shapable housing comprising a curable material made of a thermosetting resin or an incurable but flexible material that is capable of conforming to the treatment area. None of the cited references teach or suggest the use of thermosetting resin as the curable material. Neither do any cited references teach or suggest the use of flexible materials such as elastic bandage material, latex, silicone, cloth in the shapable housing. Therefore, the present claims as currently amended are not rendered obvious by the cited reference and any combinations thereof. Applicants respectfully request that the examiner withdraw these rejections.

The Commissioner is authorized to charge any additionally required fees to deposit account 12-0600. Should the Examiner have any questions, comments, or suggestions that would expedite the prosecution of the present case to allowance, Applicants' undersigned representative earnestly requests a telephone call at (720) 931-3012.

Respectfully submitted



Dan Cleveland, Reg. No. 36,106
Lathrop & Gage L.C.
4845 Pearl East Circle, Suite 300
Boulder, CO 80301
(720) 931-3012
(720) 931-3001